

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Amendment of the Commission's)
Rules to Preempt State and Local)
Regulation of Tower Siting for)
Commercial Mobile Service Providers)

RM-8577

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REPLY COMMENTS OF SPRINGWICH CELLULAR LIMITED PARTNERSHIP

Springwich Cellular Limited Partnership ("SCLP"), by its undersigned counsel, hereby submits its Reply Comments in the above-captioned proceeding. SCLP is the licensed Band B cellular carrier throughout Connecticut and in areas of western Massachusetts. Since it initiated service in 1984, SCLP's cellular network has expanded from an initial 17 antenna sites to 104 sites today. As a provider of cellular telephone service, SCLP has a direct interest in the outcome of this proceeding. Accordingly, SCLP addresses comments filed in response to the Cellular Telecommunications Industry Association's ("CTIA") December 22, 1994 Petition for Rulemaking ("Petition").

In its Petition, CTIA requests that the Commission issue a Notice of Proposed Rulemaking ("NPRM") proposing preemption of state and local regulation of commercial mobile radio service ("CMRS") tower siting. CTIA notes that the Commission retains authority to preempt state and local governments from enforcing zoning and other regulations which have the effect of barring or impeding CMRS providers from locating and constructing new towers.

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According to CTIA, federal preemption of CMRS tower siting regulations is consistent with Congressional intent that the states not impede the development of a national wireless telecommunications infrastructure.

SCLP recognizes the serious and legitimate concerns expressed by CTIA and a number of commenters regarding the impact of state and local jurisdiction over tower siting on the development of a nationwide CMRS marketplace, where such regulation has imposed blanket moratoria on tower site construction, or where the exercise of such jurisdiction has resulted in the unreasonable or arbitrary and capricious application of regulations by local zoning boards.^{1/} Such unreasonable actions warrant the Commission's intervention and, where necessary, preemption, to assure the rapid development of a national wireless telecommunication infrastructure. SCLP submits, however, that the Commission's action need not, and should not, go so far as to preempt the reasonable execution of the states and municipalities of their legitimate local purposes. This is particularly the case since the states and municipalities are uniquely situated to assess local impact, the identification of alternative sites, and the maximization of tower sharing arrangements.^{2/}

^{1/} See, e.g., Comments of McCaw Cellular Communications, Inc. at 11-12, 13, and Exh. 1; Comments of United States Cellular Corporation at 9; Comments of NYNEX Mobile Communications Company at 6; *see also* Comments of Southwestern Bell Mobile Systems, Inc.; Comments of Vanguard Cellular Systems, Inc. at 4-5; Comments of American Personal Communications; Frontier Cellular Holdings, Inc.; Comments of BellSouth.

^{2/} See Comments of Richard Blumenthal, Attorney General of the State of Connecticut, and the Connecticut Siting Council ("Connecticut Comments") at 10. *See also*, Comments of the Commonwealth of Massachusetts, Office of the Attorney General; Comments of County of Prince William; Comments of The National Association of Telecommunications Officers and Advisors, National Association of Counties, National League of Cities, and U.S. Conference of Mayors.

SCLP's experience confirms that, in cases where states adopt clear, well-tailored rules addressing tower siting, and utilize an informed judgment in the expeditious application of such rules, legitimate local interests can be effectively and appropriately addressed. SCLP concurs with the comments filed by the Connecticut Attorney General and the Connecticut Siting Council that, as part of its consideration of applications for new tower sites, the Council has recognized the federal interest in deployment of CMRS services, and the federal preemption of technical standards and market structure.^{3/} SCLP's experience has been that the Connecticut Siting Council has made every effort to expedite its consideration of tower site applications, while giving due consideration to environmental, ecological, scenic and historic values and other land use concerns.^{4/} In its review, the Connecticut Siting Council also properly considers the state's interest in efficient tower siting by analyzing whether the applicant could share an existing tower or the degree to which a new tower could be shared by others.^{5/}

SCLP submits that the Commission should act in a manner which preserves for local authorities, such as the Connecticut Siting Council, the ability to exercise their legitimate interests in overseeing tower siting issues. At the same time, to correct, and avoid in the future, the unreasonable local actions and restrictions related by some commenters in other jurisdictions, the Commission should provide a clear statement as to the national policy favoring the deployment of wireless telecommunications systems and set forth parameters as to the role of the states and municipalities in the tower siting area. For these reasons, SCLP supports the adoption

^{3/} Connecticut Comments at 7-10.

^{4/} Public Utility Environmental Standards Act ("PUESA"), Conn. Gen Stat. § 16-50g - 16-50aa.

^{5/} Connecticut Comments at 7-10.

of a Notice of Proposed Rulemaking to establish general guidelines regarding local tower siting regulation. That NPRM should recognize the legitimate interests of states, such as Connecticut, to establish and fairly apply clear and uniform guidelines well-tailored to the consideration of legitimate local interests related to tower placement and design. The Commission's guidelines, however, should also prohibit state and local regulations that act to bar entry, or unreasonably or arbitrarily restrict the provision of federally licensed CMRS services. SCLP agrees with other commenters that the establishment of such federal guidelines will serve as an important guide for local and state regulators in their effort to address what are often difficult local zoning matters. Furthermore, such guidelines will avoid needless appeals to the Commission by providing CMRS providers with a touchstone with which to assess the legitimacy of a unfavorable zoning determination.^{6/}

Several commenters note that the Commission has, on several previous occasions, decided not to adopt over-arching federal preemption of tower regulations.^{7/} For example, in establishing guidelines governing the preemption of state and local regulation of receive-only satellite earth stations, the Commission preempted only those regulations which arbitrarily discriminated against these facilities; it did not otherwise intrude on reasonable non-federal regulation of these sites.^{8/} In another instance, the Commission rejected a request to preempt state regulation concerning amateur facilities and adopted only general guidelines that "local regulations [governing amateur facilities]. . . must be crafted to accommodate reasonably amateur communications and to . . .

^{6/} *E.g.*, Comments of Paging Network, Inc. at 3.

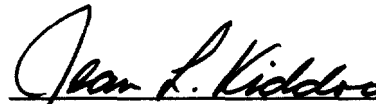
^{7/} *E.g.*, Comments of Encompass, Inc. at 3-4.

^{8/} *Preemption of Local Zoning or Other Regulation of Receive-Only Satellite Earth Stations*, 59 Rad. Reg. 1073 (1986).

accomplish the local authority's legitimate purpose."^{2/} In both cases, the Commission recognized the value of reasonably accommodating the interests of both states and service providers. SCLP recommends a similar approach in this instance as well.

Accordingly, SCLP supports the adoption of an NPRM concerning the establishment of general guidelines regarding local tower siting regulation insofar as it recognizes the legitimate interests of states, such as Connecticut, to establish and fairly apply narrow, clear, and uniform guidelines governing the consideration of legitimate local interests related to tower placement.

Respectfully submitted,



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^{2/} *Federal Preemption of State and Local Regulations Pertaining to Amateur Radio Facilities*, 101 FCC 2d 952, 960 (1985).

CERTIFICATE OF SERVICE

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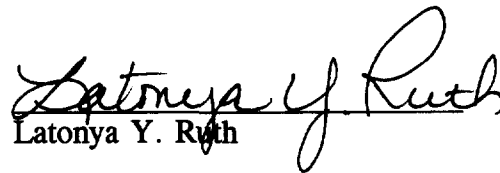
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